

By: Ellis

S.B. No. 1119

A BILL TO BE ENTITLED

AN ACT

relating to beverage container deposits and recycling; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 376 to read as follows:

CHAPTER 376. TEXAS CONTAINER RECYCLING INITIATIVE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 376.001. DEFINITIONS. In this chapter:

(1) "Beverage" means an alcoholic, nonalcoholic, carbonated, or noncarbonated drink prepared in liquid, ready-to-drink form and intended for human consumption. The term includes:

(A) beer;

(B) ale;

(C) malt liquor;

(D) other drinks produced by fermenting malt;

(E) spirits;

(F) wine;

(G) wine coolers;

(H) soda;

(I) water, including mineral water;

(J) carbonated water, including carbonated mineral water;

1 (K) carbonated soft drinks;

2 (L) noncarbonated soft drinks and sport drinks;

3 (M) noncarbonated fruit drinks;

4 (N) energy drinks;

5 (O) coffee and tea drinks; and

6 (P) carbonated fruit drinks.

7 (2) "Beverage container" means a glass, metal, or
8 plastic vessel that is hermetically sealed or capped and that
9 contains a beverage at the time it is sold or offered for sale.

10 (3) "Consumer" means a person who purchases a beverage
11 in a beverage container for the person's own use or consumption.
12 The term includes a lodging, eating, or drinking establishment if
13 beverages are generally consumed on the establishment's premises
14 and does not include a person who purchases the beverage from the
15 establishment for consumption on the premises.

16 (4) "Convenience redemption zone" means:

17 (A) the one-half-mile radius around a retail
18 dealer with at least \$2 million in food-related sales each year who
19 is located in a municipality with a population of more than 50,000;
20 or

21 (B) the two-mile radius around a retail dealer
22 with at least \$2 million in food-related sales each year who is not
23 located in a municipality described by Paragraph (A).

24 (5) "Distributor" means a person who distributes
25 beverages in beverage containers to retail dealers.

26 (6) "Infant formula" means any liquid food sold as an
27 alternative for human milk for the feeding of infants.

1 (7) "Medical food" means a food or beverage that is
2 formulated to be consumed or administered under the supervision of
3 a physician and that is intended for specific dietary management of
4 diseases or health conditions for which distinctive nutritional
5 requirements, based on recognized scientific principles, are
6 established by medical evaluation. The term also includes any
7 product that meets the definition of "medical food" under Section
8 5(b)(3), the Food, Drug, and Cosmetic Act (21 U.S.C. Section
9 360ee).

10 (8) "Redemption center" means an operation approved by
11 the commission to redeem beverage containers under this chapter and
12 includes a manned operation or a mechanical device that accepts
13 empty beverage containers and issues a cash refund or a redeemable
14 credit slip with a value not less than the container's refund value.

15 (9) "Refund" means a payment by a redemption center
16 under Section 376.201 to a person who presents a beverage container
17 at the redemption center.

18 (10) "Retail dealer" means a person who sells a
19 beverage in a beverage container to a consumer.

20 Sec. 376.002. ADMINISTRATION AND RULES. (a) The
21 comptroller shall establish and administer the Texas container
22 recycling initiative in accordance with this chapter.

23 (b) In administering the Texas container recycling
24 initiative, the comptroller shall:

25 (1) approve redemption centers under Section 376.152;

26 (2) enforce compliance with the provisions of this
27 chapter;

1 (3) administer the infrastructure improvement grant
2 program under Section 376.003;

3 (4) develop and implement a marketing plan to provide
4 information and educate consumers about the initiative;

5 (5) conduct any audit of the initiative the
6 comptroller determines is necessary;

7 (6) develop an operating budget for the initiative;

8 (7) ensure the solvency of the initiative's account;

9 (8) develop a system for reimbursement of deposits and
10 refunds and for distribution of handling fees;

11 (9) develop a system for monitoring the number of
12 containers sold by distributors and the number of containers
13 returned to redemption centers and curbside recycling centers;

14 (10) develop a system for covering the start-up costs
15 of the initiative as described by Section 376.105;

16 (11) administer the Texas container recycling
17 initiative account as provided by Section 376.104; and

18 (12) adopt rules and forms necessary to implement this
19 chapter.

20 Sec. 376.003. INFRASTRUCTURE IMPROVEMENT GRANT PROGRAM.

21 (a) The comptroller shall develop and administer a program to
22 provide grants from money in the Texas container recycling
23 initiative account to ensure sufficient infrastructure is
24 available to increase the state recycling rate by expanding
25 curbside recycling programs, municipal recycling facilities, and
26 independent redemption centers.

27 (b) The total amount of money available each year under the

1 grant program may not exceed five percent of the money available in
2 the account.

3 (c) The comptroller may adopt guidelines to allow a regional
4 planning commission, council of governments, or similar regional
5 planning agency created under Chapter 391, Local Government Code,
6 to apply for and receive a grant to improve the ability of the
7 program to achieve its goals.

8 (d) A recipient of a grant under this section must return
9 any unexpended grant money to the comptroller for redeposit into
10 the account.

11 (e) A project funded by a grant under this section must
12 promote cooperation between public and private entities and may not
13 be used to create a competitive advantage over a private industry
14 that provides recycling services.

15 (f) Not later than September 1 of each year, an entity
16 receiving a grant under this section must submit a report to the
17 comptroller detailing the use of the grant money. The comptroller
18 shall include this information in its report to the legislature
19 under 376.005.

20 (g) An application for a grant under this section must be
21 made on a form provided by the comptroller and must contain the
22 information required by the comptroller.

23 (h) This section expires when the state recycling rate
24 reaches 65 percent, as determined by the comptroller.

25 Sec. 376.004. CRIMINAL PENALTIES. A person commits an
26 offense if the person knowingly violates Section 376.051, 376.101,
27 376.102, or 376.201. An offense under this section is a Class C

1 misdemeanor.

2 Sec. 376.005. REPORT TO LEGISLATURE. Not later than
3 November 1 of each year, the comptroller shall submit a report to
4 the governor, lieutenant governor, speaker of the house of
5 representatives, and committee in each house of the legislature
6 that has primary jurisdiction over environmental matters about the
7 progress and success of the Texas container recycling initiative
8 established under this chapter.

9 [Sections 376.006-376.050 reserved for expansion]

10 SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS

11 Sec. 376.051. REFUND VALUE AND LABEL REQUIRED. (a) Except
12 as provided by Subsection (b), a person may not sell or offer for
13 sale in this state a beverage container unless the container:

14 (1) has:

15 (A) a fluid capacity of less than 24 ounces and a
16 refund value of five cents; or

17 (B) a fluid capacity of at least 24 ounces and a
18 refund value of 10 cents; and

19 (2) is labeled as required by Section 376.052.

20 (b) A person may sell or offer for sale a beverage container
21 that does not have a refund value if:

22 (1) the container has a fluid capacity of more than one
23 gallon; or

24 (2) the container contains:

25 (A) a beverage that consists of milk or of 100
26 percent fruit or vegetable juice; or

27 (B) medical food or infant formula.

1 Sec. 376.052. LABELING. (a) A beverage container required
2 to have a refund value under Section 376.051 that is offered for
3 sale in this state must have legibly stamped, labeled, or embossed
4 on the container:

5 (1) the refund value of the container;

6 (2) the name "Texas" or the abbreviation "TX"; and

7 (3) other language as required by the commission.

8 (b) Any beverage container intended for sale in this state
9 must be printed, embossed, stamped, labeled, or otherwise marked
10 with a universal product code or similar machine-readable indicia.

11 [Sections 376.053-376.100 reserved for expansion]

12 SUBCHAPTER C. COLLECTION OF DEPOSIT

13 Sec. 376.101. COLLECTION OF DEPOSIT BY DISTRIBUTOR AND
14 RETAIL DEALER. (a) A distributor shall collect a deposit of 5 or 10
15 cents, as established by Section 376.051, from a retail dealer for
16 each beverage container that the distributor sells to the retail
17 dealer.

18 (b) A retail dealer shall collect a deposit of 5 or 10 cents,
19 as established by Section 376.051, from a consumer for each
20 beverage container that the retail dealer sells to the consumer.

21 (c) The invoice for a beverage container sold by a retail
22 dealer to a consumer must list the beverage container deposit as a
23 separate line item. The deposit may not be included in the sales
24 tax calculation.

25 Sec. 376.102. REMITTANCE OF DEPOSITS BY DISTRIBUTOR. Not
26 later than the fifth day of each month, a distributor shall remit to
27 the comptroller the deposits collected by the distributor under

1 Section 376.101 during the preceding month.

2 Sec. 376.103. MONTHLY REPORT. (a) Not later than the fifth
3 day of each month, a distributor who collects a deposit under
4 Section 376.101 shall report to the comptroller, on a form approved
5 by the comptroller:

6 (1) the total amount of deposits collected during the
7 preceding month; and

8 (2) the number of beverage containers sold during the
9 preceding month separated by deposit amount and material of
10 container.

11 (b) The comptroller may require a distributor to include in
12 the report required by Subsection (a) other information the
13 comptroller considers necessary.

14 (c) The information contained in the report required by this
15 section is confidential and may not be disclosed by the comptroller
16 or an officer or employee of the comptroller.

17 Sec. 376.104. TEXAS CONTAINER RECYCLING INITIATIVE
18 ACCOUNT. (a) Deposits collected under this chapter shall be
19 deposited to the credit of the Texas container recycling initiative
20 account in the general revenue fund. Money in the account may be
21 appropriated only for:

22 (1) reimbursements and handling fees paid to
23 redemption centers or curbside recycling programs, as applicable;

24 (2) administration of this chapter;

25 (3) providing information and educating consumers
26 about the Texas container recycling initiative;

27 (4) reimbursing a distributor under Section 376.105;

1 and

2 (5) the purposes authorized under Section 376.003.

3 (b) At the end of each state fiscal biennium, any money in
4 the account that is unencumbered must be distributed as follows:

5 (1) 15 percent must be retained in the account for
6 unforeseen costs associated with a higher than expected recycling
7 rate; and

8 (2) 85 percent must be transferred to the undedicated
9 portion of the general revenue fund.

10 Sec. 376.105. FINANCING START-UP COSTS. (a) The
11 comptroller may apply for, accept, receive, and administer gifts,
12 grants, loans, and other funds available from any source for the
13 purposes of this chapter.

14 (b) The comptroller may charge distributors an initial fee
15 in an amount necessary to cover the start-up costs of the Texas
16 container recycling initiative. The comptroller shall reimburse
17 the distributors as sufficient money becomes available.

18 (c) The comptroller shall deposit revenue collected under
19 this section to the credit of the Texas container recycling
20 initiative account in the general revenue fund.

21 [Sections 376.106-376.150 reserved for expansion]

22 SUBCHAPTER D. REDEMPTION CENTERS AND CONVENIENCE REDEMPTION ZONES

23 Sec. 376.151. CONVENIENCE REDEMPTION ZONES. (a) A retail
24 dealer may not sell a beverage in a beverage container eligible for
25 redemption under this chapter to a consumer if there is not a
26 redemption center within the retail dealer's convenience
27 redemption zone.

1 (b) On petition by a retail dealer, the comptroller may
2 exempt the dealer from the requirements of this section if the
3 comptroller determines that extenuating circumstances support the
4 exemption.

5 (c) A redemption center within a convenience redemption
6 zone may be owned and operated by a retail dealer, local government,
7 or independent entity.

8 (d) A retail dealer who owns and operates a redemption
9 center shall register with the comptroller in the manner described
10 by Section 376.152.

11 Sec. 376.152. REDEMPTION CENTERS. (a) To facilitate the
12 return of empty beverage containers, a retail dealer, local
13 government, or independent entity may establish a redemption center
14 at which empty containers may be returned for their refund value.

15 (b) The retail dealer, local government, or independent
16 entity must file an application for approval of a redemption center
17 with the comptroller. The application must state:

18 (1) the name, mailing address, telephone number,
19 electronic mail address, and title of the person responsible for
20 the establishment and operation of the redemption center;

21 (2) the physical address of the redemption center;

22 (3) the name and address of each retail dealer in whose
23 convenience redemption zone the redemption center is located;

24 (4) the applicant's federal tax identification number,
25 if applicable; and

26 (5) any additional information the comptroller by rule
27 requires as necessary or convenient for the implementation of this

1 section.

2 (c) The comptroller by order shall approve a redemption
3 center if it finds the redemption center will provide a convenient
4 service to persons for the return of empty beverage containers. The
5 comptroller may include in the order other provisions that the
6 comptroller determines are necessary to ensure that the redemption
7 center will provide a convenient service to the public.

8 (d) The comptroller at any time may review its approval of a
9 redemption center. After written notice to the person responsible
10 for the establishment and operation of the redemption center and to
11 each retail dealer in whose convenience redemption zone the
12 redemption center is located, the comptroller may, after a hearing,
13 withdraw approval of a redemption center if the comptroller finds
14 the redemption center has violated the order approving the
15 redemption center.

16 (e) The comptroller by rule shall establish the required
17 hours of operation for a redemption center.

18 (f) The comptroller may not limit the number of redemption
19 centers within a convenience redemption zone.

20 [Sections 376.153-376.200 reserved for expansion]

21 SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION

22 Sec. 376.201. USED BEVERAGE CONTAINER REDEMPTION. Except
23 as provided by Sections 376.202 and 376.203, a redemption center
24 shall accept a used beverage container that has a refund value as
25 established by Section 376.051 and shall pay the refund value of the
26 container in cash to the person presenting the container if the
27 container is stamped, labeled, or embossed with the refund value

1 and the name "Texas" or the abbreviation "TX."

2 Sec. 376.202. REFUSAL PERMITTED. A redemption center may
3 refuse to accept for refund:

4 (1) a glass bottle that is broken to the extent that it
5 would present a safety hazard when handled; or

6 (2) a used beverage container that contains part of
7 its original contents or other foreign matter to the extent that it
8 could present health or sanitation problems.

9 Sec. 376.203. REDEMPTION BY WEIGHT. (a) The comptroller by
10 rule shall establish:

11 (1) a procedure for providing a reimbursement based on
12 the weight of the beverage containers presented to be used in
13 circumstances in which the number of containers is so large that
14 counting the containers individually would be burdensome on a
15 redemption center or curbside recycling program;

16 (2) a per pound redemption value for containers
17 composed of each material covered by this chapter that are redeemed
18 in the manner described by Subdivision (1);

19 (3) a per pound redemption value for unsorted
20 containers composed of any material covered by this chapter that
21 are collected as part of a single-stream recycling program and
22 redeemed in the manner described by Subdivision (1);

23 (4) a per pound handling fee to be paid to redemption
24 centers and curbside recycling programs for containers redeemed in
25 the manner described by Subdivision (1); and

26 (5) procedures for regulating the accuracy of scales
27 used to weigh containers under this section.

1 (b) Not more than every six months the comptroller by rule
2 may adjust the per pound rates described by Subsection (a).

3 Sec. 376.204. DISPOSAL OF BEVERAGE CONTAINERS BY REDEMPTION
4 CENTER AND CURBSIDE RECYCLING PROGRAM. A redemption center or
5 curbside recycling program shall dispose of the returned used
6 beverage containers by:

7 (1) selling the material generated by the crushed or
8 shredded used beverage containers to a processor or other end user;
9 or

10 (2) recycling the material in another manner
11 prescribed by the comptroller.

12 Sec. 376.205. REIMBURSEMENT OF REDEMPTION CENTERS BY
13 COMPTROLLER; HANDLING FEE. (a) On submission of a completed
14 invoice of refunds paid by a redemption center on a form adopted by
15 the comptroller, the comptroller shall pay to the redemption center
16 an amount equal to the redemption value established by Section
17 376.051 or 376.203, as applicable, plus a handling fee of:

18 (1) one and one-half cents for each beverage container
19 redeemed by the redemption center under Section 376.201; or

20 (2) the per pound amount determined under Section
21 376.203 for beverage containers redeemed in the manner described by
22 that section.

23 (b) The comptroller shall reimburse a redemption center
24 under Subsection (a) not later than five working days after the
25 comptroller receives the invoice submitted by the redemption
26 center.

27 (c) The comptroller by rule may adjust a handling fee to

1 account for changes in market conditions. The comptroller may
2 periodically conduct research to determine if an adjustment is
3 necessary.

4 Sec. 376.206. REIMBURSEMENT OF CURBSIDE RECYCLING PROGRAM
5 BY COMPTROLLER. (a) On submission of a completed report, on a form
6 adopted by the comptroller, indicating the number or weight, as
7 applicable, of beverage containers collected by a curbside
8 recycling program that are covered under this chapter, the
9 comptroller shall pay to the curbside recycling program an amount
10 equal to the redemption value established by Section 376.051 or
11 376.203, as applicable, plus a handling fee of:

12 (1) one-half of one cent for each beverage container
13 collected by the curbside recycling program; or

14 (2) the per pound amount determined under Section
15 376.203 for beverage containers redeemed in the manner described by
16 that section.

17 (b) The comptroller shall reimburse a curbside recycling
18 program under Subsection (a) not later than five working days after
19 the comptroller receives the invoice submitted by the curbside
20 recycling program.

21 (c) The comptroller by rule may adjust a handling fee to
22 account for changes in market conditions. The comptroller may
23 periodically conduct research to determine if an adjustment is
24 necessary.

25 Sec. 376.207. REPORTING REQUIREMENTS. Each redemption
26 center and curbside recycling program shall submit a report with
27 the submission of the completed invoice required under Sections

1 376.205 and 376.206, respectively, to the comptroller, on a form
2 approved by the comptroller, that provides:

3 (1) the redemption value of beverage containers
4 collected by the redemption center or curbside recycling program;

5 (2) the number or weight of beverage containers
6 collected by the center or curbside recycling program; and

7 (3) an invoice or other documentation that provides
8 proof that the collected recycled material was recycled in a manner
9 described under Section 376.204.

10 SECTION 2. Section 151.007(c), Tax Code, is amended to read
11 as follows:

12 (c) "Sales price" or "receipts" does not include any of the
13 following if separately identified to the customer by such means as
14 an invoice, billing, sales slip or ticket, or contract:

15 (1) a cash discount allowed on the sale;

16 (2) the amount charged for tangible personal property
17 returned by a customer if the total amount charged is refunded by
18 cash or credit;

19 (3) a refund of the charges for the performance of a
20 taxable service;

21 (4) finance, carrying and service charges, or interest
22 from credit extended on sales of taxable items under a conditional
23 sales contract or other contract providing for the deferred payment
24 of the purchase price;

25 (5) the value of tangible personal property that:

26 (A) is taken by a seller in trade as all or part
27 of the consideration for a sale of a taxable item; and

1 (B) is of a type of property sold by the seller in
2 the regular course of business;

3 (6) the face value of United States coin or currency in
4 a sale of that coin or currency in which the total consideration
5 given by the purchaser exceeds the face value of the coin or
6 currency; ~~[or]~~

7 (7) a voluntary gratuity or a reasonable mandatory
8 charge for the service of a meal or food products, including soft
9 drinks and candy, for immediate human consumption when the service
10 charge is separated from the sales price of the meal or food product
11 and identified as a gratuity or tip and when the total amount of the
12 service charge is disbursed by the employer to employees who
13 customarily and regularly provide the service; or

14 (8) a beverage container redemption fee under Chapter
15 376, Health and Safety Code.

16 SECTION 3. (a) Not later than September 1, 2012, the
17 comptroller of public accounts shall adopt the rules necessary to
18 implement Chapter 376, Health and Safety Code, as added by this Act.

19 (b) The requirements of and penalties imposed by Chapter
20 376, Health and Safety Code, as added by this Act, do not apply to
21 any person before January 1, 2013.

22 SECTION 4. This Act takes effect September 1, 2011.